

Exhibit D

Hofman, Herman D.

From: Hofman, Herman D.
Sent: Thursday, February 3, 2022 12:31 PM
To: Clayman, John
Subject: RE: BOKF/Ortiz v. Nelms (123.001) - Response to Subpoena
Attachments: Monsanto Co v Loren.pdf

John,

Nice talking to you over the phone just now. As discussed, below are cites to the cases holding that Texas Finance Code Section 59.006 does not apply to discovery in a federal case:

Alpert v. Riley, No. CIV.A. H-04-CV-3774, 2009 WL 1226762, at *6 (S.D. Tex. Apr. 30, 2009)
British Int'l Ins. Co., Ltd. v. Seguros La Republica, S.A., 200 F.R.D. 586, 594 (W.D. Tex. 2000).

I've also attached another Order on point that isn't on Westlaw.

After you've had a chance to review, please confirm whether your client will be withdrawing its objections based on the Texas Right to Financial Privacy Act.

Thanks,



Herman D. Hofman
Associate

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From: Clayman, John <JClayman@fdlaw.com>
Sent: Wednesday, February 2, 2022 6:29 PM
To: Hofman, Herman D. <hdhofman@varnumlaw.com>
Cc: Caywood, Candace <CCaywood@fdlaw.com>; Simms, Amber <asimms@fdlaw.com>; eparzianello@hspplc.com; kmajewski@hspplc.com; sdenenfeld@lewisreedallen.com; Clayman, John <JClayman@fdlaw.com>
Subject: BOKF/Ortiz v. Nelms (123.001) - Response to Subpoena

Good evening Mr. Hofman:

John D. Clayman
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FREDERIC DORWART, LAWYERS PLLC
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124 East Fourth Street
Tulsa, Oklahoma 74103
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FREDERIC DORWART
LAWYERS PLLC

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MONSANTO COMPANY and)	
MONSANTO TECHNOLOGY LLC)	
Plaintiffs,)	
)	
vs.)	Case No. 4:04CV425 HEA
)	
LOREN DAVID,)	
)	
Defendant.)	

ORDER

This matter is before the Court on defendant's Motion to Quash Subpoena, [# 51]. Plaintiffs oppose this motion and have filed a memorandum supporting their position. For the reasons set forth below, the Motion is denied.

Defendant moves, *pro se*, to quash the subpoena for the production of documents served on Wells Fargo Bank by plaintiffs. Defendant contends that the documents requested are privileged and irrelevant. Defendant further contends that Dawn David, a nonparty, was not given notice nor served a copy of the "request."

As plaintiffs argue, while financial information may be sensitive in nature, it is not privileged nor protected to the extent that it is not discoverable. Defendant has provided no authority to the contrary.

Nor is defendant's position that the information is irrelevant persuasive. The requested information regarding checks is precisely the type of information which

may lead to relevant evidence regarding plaintiff's claims. As such, the information is discoverable under the Federal Rules of Civil Procedure.

Finally, defendant's reliance on the "Finance Code" is misplaced. Because this action is pending in Federal Court and pertains to federal law, state law is inapplicable, particularly the law of a state other than Missouri. Thus, plaintiff was not required to satisfy the requirements of the Texas Finance Code with respect to notice to a nonparty.¹

Accordingly,

IT IS HEREBY ORDERED that defendant's Motion to Quash Subpoena, [# 51], is denied.

Dated this 2nd day of March, 2005.



HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE

¹ The Court also notes that plaintiff is in possession of 151 pages of monthly statements of defendant. These statements were used to identify the specific checks plaintiff now requests. The Court, therefore agrees with plaintiff that since defendant had no objection to the production of the statements, his objection to production of the specific checks is extremely unpersuasive.

Hofman, Herman D.

From: Clayman, John <JClayman@fdlaw.com>
Sent: Thursday, February 3, 2022 9:08 PM
To: Hofman, Herman D.
Cc: Caywood, Candace; Simms, Amber; Clayman, John
Subject: RE: BOKF/Ortiz v. Nelms (123.001) - Response to Subpoena
Attachments: Tavernini v Bank of Am, NA, No 412cv420, 2014 BL 491684 (ED Tex~.rtf; Jacquez v Compass Bank, No EP-15-CV-26-RFC, 2015 BL 473209 (WD ~.rtf

Good evening Herman:

Thank you for your courtesy today. I located a copy of federal cases from Texas District Courts that cloud the exclusive applicability of the Federal Rules of Civil Procedure over Section 59.006.

1. In Taverni, the Eastern District applied the cost recovery provisions in Section 59.006 for a non-party witness, Wells Fargo Bank.
2. In Jacquez, the Western District applied the provisions of Section 59.006 for disclosures of the identities of bank customers.

I'm not finding anything out of the Northern District of Texas. I wasn't clear from our conversation whether you had provided Mr. Beddle with a copy of the Subpoena. Given that the Bank has until February 28 to comply, I'm inclined to reach out to Mr. Beddle and determine whether he has any concerns about the release of his account information. He may want a Protective Order of some kind. Has a Protective Order been entered in the case?

I look forward to hearing from you. Take care.

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John D. Clayman

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